In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-311

RUDOLPH NETSKI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Nevada, petitioner, a licensed pharmacist, was convicted of having ordered large quantities of narcotic drugs pursuant to official order forms for purposes "other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession," in violation of 26 U.S.C. (1964 ed.) 4705(g). The court of appeals affirmed *per curiam* (Pet. App.).

Petitioner contends, as he did in the courts below, that the trial judge erred in denying his requested jury instruction that the government must prove beyond a reasonable doubt that, after ordering the narcotic drugs, he in fact used them in an illegitimate manner. As the court of appeals held, however, the statute does not punish the unlawful use of the drugs but rather the act of ordering them with intent to use them for a prohibited purpose. Thus, the instruction was properly refused. See *United States* v. *Hymowitz*, 196 F.2d 819, 821 (C.A. 2). There was ample evidence of petitioner's illicit intent when he ordered the drugs, as the court of appeals held (Pet. App. 2).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1971.

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